



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9712-7]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of corrections to the 2012 Construction General Permit.

SUMMARY: EPA previously announced the issuance of the NPDES general permit for stormwater discharges from construction activity, also referred to as the 2012 Construction General Permit (2012 CGP), in the February 29, 2012 **Federal Register**. Today's action provides notice of final 2012 CGP issuance for Idaho; Washington (for projects involving federal operators); the Fond Du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; the Bad River Band and Lac Du Flambeau Band of Lake Superior Chippewa in Wisconsin. EPA is also today providing notice of its correction of typographical errors made in the 2012 CGP pertaining to New Mexico's state-specific requirements and the state's list of designated Tier 2 and Tier 3 waters, and a correction to EPA's omission of Idaho's list of designated Tier 2 and Tier 3 waters.

DATES: The 2012 CGP became effective in Idaho on April 9, 2012; for federal operators in Washington on April 13, 2012; and for the above-referenced Tribal areas in Minnesota and Wisconsin on May 9, 2012. These effective dates provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2008 CGP on February 15, 2012. The 2012 CGP and the authorization to discharge will expire at midnight on February 16, 2017. Within 90 days of the permit's date of issuance, operators of existing projects must submit an NOI for

coverage under the new permit. Therefore, for existing projects located in areas in the State of Idaho (except for Indian country) NOIs must be submitted by no later than July 8, 2012. For existing projects located in areas in the State of Washington (except for Indian country) subject to construction activity by a Federal Operator, NOIs must be submitted by no later than July 12, 2012. For existing projects located in the following areas, NOIs must be submitted no later than August 7, 2012: the Fond Du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; the Bad River Band and Lac Du Flambeau Band of Lake Superior Chippewa in Wisconsin. Operators of new projects who elect to be covered under the 2012 CGP are required to submit an NOI for coverage at least 14 days prior to the commencement of earth-disturbing activities. If a permitted operator is transferring control of a construction project to a new operator, the new operator must submit a NOI 14 days prior to the date of transfer.

In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on the date of this publication. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent for projects located in the areas listed above are provided as part of this action.

FOR FURTHER INFORMATION CONTACT: For further information on the CGP, contact the appropriate EPA Regional office listed in Section I.C, or you can send an

email to cgp@epa.gov. You may also contact Greg Schaner or Erika Farris, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: shaner.greg@epa.gov or farris.erika@epa.gov, respectively.

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

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I. General Information

EPA summarized the CGP permit conditions, as well as changes from the previous version of the CGP, in the February 29, 2012, **Federal Register** notice.

A. Does this action apply to me?

The final 2012 construction general permit (also referred to as “CGP” or “2012 CGP”) applies to the following construction activities:

Table 1 Entities Potentially Regulated by this Permit

Category	Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Construction Buildings	236
	Heavy and Civil Engineering Construction	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by this action, you should carefully examine the definition of "construction activity" and "small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. How can I get copies of these documents and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2010-0782. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Although all documents in the docket are listed in an index, some information

is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government on-line source for Federal regulations at <http://www.regulations.gov>.

Electronic versions of this final permit and fact sheet are available on EPA's NPDES Web site at <http://www.epa.gov/npdes/stormwater/cgp>.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

C. Who are the EPA regional contacts?

For EPA Region 5, contact Brian Bell at tel.: (312) 886-0981 or email at bell.brianc@epa.gov.

For EPA Region 6, contact Suzanna Perea at tel.: (214) 665–7217 or email at perea.suzanna@epa.gov.

For EPA Region 10, contact Margaret McCauley at tel.: (206) 553–1772 or email at mccauley.margaret@epa.gov.

II. Summary of Permit Actions

A. Issuance of 2012 CGP for Additional States and Tribes

On February 16, 2012, EPA issued the 2012 CGP for most of the areas where EPA is the permitting authority. Because EPA had not yet received Clean Water Act Section 401 certifications from certain states and tribes, EPA was not able to issue the final CGP in these areas. The following states and tribes were affected:

- The State of Idaho;
- Federal operators in Washington;
- The Fond Du Lac Band and Grand Portage Band of Lake Superior

Chippewa in Minnesota; and

- The Bad River, Lac Du Flambeau, and Sokaogon Chippewa (Mole Lake) Community in Wisconsin

Now that EPA has received the required Clean Water Act 401 certifications, the Agency has issued the final 2012 CGP for these areas, except for the Sokaogon Chippewa (Mole Lake) Community in Wisconsin, who denied certification of the permit. Pursuant to CWA section 401(d), the limitations and requirements contained in these certifications are now conditions of the 2012 CGP and are included in Part 9 of the permit. See Parts 9.3, 9.7.1, and 9.7.3.

The complete text of the updated 2012 CGP as well as additional information on Webcasts, Guidance, and Other Implementation Assistance can be obtained through EPA's Web site at <http://www.epa.gov/npdes/stormwater/cgp>.

B. Correction of Typographical Errors in New Mexico Requirements

Following the issuance of the 2012 CGP on February 16, 2012, EPA discovered that a few of the requirements in Part 9.4.1 were incorrectly transcribed from the State of New Mexico's Section 401 certification conditions. The errors related to EPA's misinterpretation of a few of the state's site stabilization conditions. Additionally, EPA learned that the permit's list of New Mexico waterbodies designated by the state as Tier 2 or Tier 3 for antidegradation purposes (Appendix F) was inaccurate. As a result of the errors, Appendix F did not properly inform construction operators of which waters are designated by the state as Tier 2; construction sites discharging to Tier 2-designated waters are subject to stricter stabilization and inspection requirements. See Part 3.3.2. In consultation with the state, EPA has corrected the errors and included updated requirements in Part 9.4.1 and Appendix F of the permit.

C. Correction to Omission of Idaho's List of Sensitive Waters

Subsequent to permit issuance, EPA also discovered that it had erroneously omitted Idaho's list of state Tier 2 and 3 waters (Appendix F). In consultation with the state, EPA has corrected the omission, and has updated the Appendix F list to include instructions on how to determine if particular waters are designated as Tier 2 or 3.

III. Compliance with Other Statutes

EPA summarized the Agency's compliance with the National Environmental Policy Act (NEPA), Executive Orders 12866 and 13563, Executive Order 12898, and

Executive Order 13175 in the February 29, 2012 **Federal Register** notice. See 77 FR 12292 for more information.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 30, 2012.

Michael A. Bussell,
Director,
Office of Water and Watersheds,
EPA Region 10.

Dated: May 31, 2012.

Timothy C. Henry,
Associate Director, Water Division, EPA Region5.

Dated: May 30, 2012.

William K. Honker, P.E.,
Acting Director,
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